

### **Remarks**

The Office Action mailed October 7, 2003 has been received and reviewed. Claims 1 through 6 and 30 through 39 are noted in the Office Action as currently pending in the application. Claim 39 was withdrawn from consideration in the Office Action as assertedly drawn to a non-elected group. Accordingly, applicants have canceled claim 39 herein to expedite allowance. This cancellation is made without prejudice, and applicants may pursue the subject matter of this claim in one or more related applications. Reconsideration of the application as amended herein is respectfully requested.

### **Clarification of Election**

On page 2, the Office Action states "Applicant's election with traverse of the Group 1 claims, claims 1-6, in Paper No. 8 is acknowledged." Applicants note that the Amendment and Response to Restriction Requirement contained an election of group 1 **without traverse** (*see* Amendment and Response to Restriction Requirement at page 5) and wish to ensure this is clear on the record.

### **Objection to Claim 1**

Claim 1 was objected to in the Office Action at page 2. The Office Action asserts "the phrase 'transferring recombinant nucleic acid' lacks the article 'a' between 'transferring' and 'recombinant.'" Applicants respectfully traverse this objection. It is noted that the "recombinant nucleic acid" in claim 1 includes "one molecule," as in dependent claim 2, and "at least two nucleic acid molecules that upon homologous recombination in said cell are capable of forming said recombinant nucleic acid," as in claim 34. Accordingly, applicants respectfully submit that claim 1 as it currently appears is correct, and the inclusion of the single article "a" would be inappropriate. It is thus respectfully requested this objection be withdrawn. Should the Office determine that further action is required on this point, applicants request the Examiner contact their undersigned counsel with suggested language to address this issue.

### **Claim Rejections**


Claims 1 through 6 and 30 through 38 were rejected in the Office Action as assertedly

unpatentable over claims 1 through 20 of U.S. Patent 5,994,128 and claims 1 through 14 of U.S. Patent 6,306,652. Applicants have provided terminal disclaimers in compliance with 37 CFR 1.321(c) for each of these cited patents to overcome this rejection, as suggested in the Office Action. Applicants thus respectfully submit this rejection should be withdrawn and the claims allowed.

### **Conclusion**

All pending claims are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Office determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact applicants' undersigned attorney.

Respectfully submitted,



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